

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1770 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

M/S UNITED INDIA PHOSFEROUS LIMITED

Versus

VINODBHAI MOHANBHAI PATEL

Appearance:

MS SEJAL K MANDAVIA for Petitioners

MR MJ TRIVEDI for Respondent No. 1

MR.H.F.MEHTA,ld.A.P.P.for the respondent No.2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 16/10/96

ORAL JUDGEMENT

Rule.

2. The accused in Criminal Case No.568 of 1996 on the file of Judicial Magistrate First Class, Ahmedabad Rural have filed the present petition under Section 482 of the Code of Criminal Procedure for quashing and setting aside the proceeding of the said Criminal Case.

3. The petitioners are the Private Limited Company manufacturing agro-climatic and pesticides. The respondent No.1 was a customer of the petitioners-Company and admittedly there was transactions of respondent No.1 purchasing the petitioners-Company's products on credit. It is the claim of the petitioners that on 5-10-95 the respondent No.1 was owing an amount of Rs.6,71,115=26 and towards the said dues, they gave a cheque bearing No.168896 on 30-1-1996. The said cheque was presented by the petitioners for encashment to their Bank and the cheque was dishonoured with endorsement of insufficient funds. Thereafter, the petitioners had issued statutory notice under Section 138 of Negotiable Instruments Act and then getting a reply from the respondent No.1 and non-payment of the full of the amount of the cheque within 15 days of the receipt of the said notice, they lodged a complaint in the court of Judicial Magistrate First Class, Ahmedabad Rural, under Section 138 of Negotiable Instruments Act. It is the case of the petitioners that after the respondent No.1 served with the said notice, the respondent No.1 has filed this private Criminal Case No.568 of 1996 in the Court of Judicial Magistrate First Class, Ahmedabad Rural alleging that the respondent No.1 had given this cheque and 4 other cheques by merely signing them and there was no writing of the name of the person to whom the cheque was issued. Similarly the figures of amount also were not in the said cheque and the petitioners used one of the said cheque namely cheque bearing No.168896 and wrote his own name as holder of the cheque and also inserted the figures of Rs.6,71,115=26ps. and by doing the said act, the petitioners have committed the offence punishable under Sections of 175, 406, 409, 420, 427, 465 467, 120-B and 114 of IPC and on the strength of the same, a process has been issued against the present petitioners. It is their claim that it is clear abuse of process of law, and, therefore, the said criminal proceeding should be quashed.

4. The notice was issued to the respondent No.1 and the respondent No.1 has contested the claim of the petitioners. The petitioners as well as the respondents are heard at length, and, therefore, I proceed to decide this petition finally.

5. It is true that at this stage, I am considering the question as to whether the criminal proceeding in question is to be quashed by exercising the discretionary power under Section 482 of the Code of Criminal Procedure. At this stage, it is not my duty to find out as to whether the accused will be ultimately convicted or

acquitted. If from the material and record it is found that the criminal proceeding in question is a clear abuse of process of law, then alone I can quash the same. In the case of Panjab National Bank v. Surendra Prasad Sinha, A.I.R. 1992, 1815 it is observed by the Supreme Court as under :

" Judicial process should not be an instrument of oppression or needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of private complainant as vendetta to harass the persons needlessly.

In that case the complainant had some fix deposited with the Punjab National Bank. Similarly, the complainant had also taken some loans from Punjab National Bank. The claim of the Punjab National Bank to recover the said amount of loans by filing a suit in the Civil Court had become time barred. Thereafter, the Punjab National Bank had deducted the amount which was due to the Punjab National Bank from the complainant on his loan account from his fixed deposit and in that case, it was the claim of the complainant that the amount of deposit was an entrustment with the Punjab National Bank and their act in not returning the amount of deposit and the act of deducting the amount of their dues and recovering from the fixed deposit was a criminal act of misappropriation, and, therefore, he had filed a private complaint. The said complaint was quashed by the Supreme Court by laying down the above principles.

6. In the instant case, there is no dispute of the fact that the complainant had taken goods on credit from the petitioners. It is also an admitted fact that the petitioners have filed a Criminal Case under Section 138 of the Negotiable Instruments Act against the present complainant i.e. respondent No.1 by saying that the cheque in question was issued by the respondent No.1-complainant towards his debt due to the petitioners and the said cheque has been dishonoured and on account of the same, the respondent No.1 has committed the offence alleged against him. Therefore, the question as to whether the cheque in question is issued by the present respondent No.1 or whether it is a forged cheque as claimed by the respondent No.1 could not be considered and contested in a separate criminal proceeding. The contention which the complainant- respondent No.1 is raising will have to be raised in that criminal

proceeding and there could not be a separate prosecution for his alleged contention for the alleged commission of offence. Therefore, in view of the nature of the complainant itself, it is quite obvious that the prosecution in question is a clear abuse of process of law.

7. The learned Advocate for the respondent urged before me that the cheque in question was given by the complainant-respondent No.1 by merely signing. It was blank as regards the name of Payee as well as the amount and when the petitioners have written the name of payee and the figure, the act is covered by Section 463 of I.P.C.. He urged that it is covered by illustration "C" to Section 463. The illustration C to Section 463 runs as under :

A picks up a cheque on a banker signed by B payable to bearer, but without any sign having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

If the above illustration is carefully read and considered, then it would be quite clear that B drawer of the cheque had not handed over the cheque to A in that case. In addition A had fraudulently inserted the figure ten thousand rupees. But in the instant case the respondent No.1- complainant had himself handed over the cheque to the petitioner and it could not be said that the figure in question was fraudulently inserted by petitioner. Because there is no dispute of the fact that the complainant was owing the amount mentioned or inserted in the cheque. Then Section 20 of the Negotiable Instruments Act empowers and authorises the petitioners to write the name of payee and the amount. Therefore, even assuming and accepting the claim of respondent No.1, the action of the petitioner would not amount to any criminal offence.

8. As per the averments made by the complainant in his complaint, as a matter of fact, the respondent No.1 had given 5 cheques were blank cheques with only signature of respondent No.1 and those 5 cheques were lying with the petitioner before me and one of the cheque has been misused by forging and fabricating the same. But the petitioners have produced the material on record that out of alleged 5 cheques mentioned in the complaint, 3 cheques bearing No.168889, 168900 and 168898 were already presented by the petitioners to their bankers and were encashed for the amounts of Rs.1,50,000/-,

Rs.2,81,124=05 and Rs. 2,48,244. This fact also will have to be taken into consideration while considering the question as to whether the prosecution in question is an abuse of process of law or not. This fact of the encashment of the 3 earlier cheques by the petitioner indicates that the allegations made by the complainant-respondent No.1 in his complaint could not be believed by a prudent man. It is one of the settled principle as regards the quashing of proceedings that if the allegations made by the petitioners could not be accepted and believed by the prudent man, then it is a fit case for quashing the proceeding.

9. No doubt, the learned advocate for the respondent No.1 has cited before the case of Mrs.Rupan Deol Bajaj and another v. Kanwar Pal Singh Gill and another, A.I.R.1996 Supreme Court, 309 , State of Maharashtra and others v.Ishwar Piraji Kalpatri and others, A.I.R.1996,Supreme Court,722 and State of Orissa v. Bansidhar Singh, A.I.R. 1996 Supreme Court 938. If the facts of all the three cases considered, then it would be quite clear that none of them is applicable to the facts before me. In the case of State of Orissa v.Bansidhar Singhv. Bansidhar Singh,A.I.R. 1996,S.C. 938 the offence was punishable under Section 302 IPC was registered on the strength of a dying declaration and the said offence registered was quashed by the High Court and the said order of the High Court has been quashed and set aside by the Hon'ble Supreme Court by holding that whether on perusal of material available namely the dying declaration and statements of another witness cognizance was taken by the court against the accused for offence u/S. 300 IPC, and hence the order of the High Court quashing the criminal proceeding by brushing aside the dying declaration on certain grounds and taking view that the deceased person was unsound mind was improper. In case of State of Maharashtra v. Piraji Kalpatri,A.I.R. 1996, 722, the High Court of Bombay had quashed the proceeding under the Prevention of Corruption Act on the allegation that the complainant was guilty of malafides and that setting and quashing aside by the High Court has been set aside by the Appex Court by holding that if the complaint which is made is correct and an offence committed which is alleged specifically it is of no consequence that the complainant was guilty of malafides. In the case of Mrs. Rupan Deol Bajaj v. Kanwar Pal Singh Gill, A.I.R.1996,S.C.309 there was a question of consideration of the quashing of the proceeding by the High Court in a complaint lodged for the alleged offences punishable under Sections 352 and 354 IPC and the complainant herself had narrated the whole incident in

her first information report and in view of the details in the first information report, the quashing of the proceeding by the High Court was set aside by the Appex Court. Thus, none of the cases cited by the learned advocate for the respondent No.1 are applicable on the facts before me. From the averments made in the complaint itself and the background in which the complaint in question has been filed, it is quite obvious that the complaint in question is a clear abuse of process of law. I, therefore, hold that the discretionary powers under Section 482 of the Cr.P.C. will have to be exercised in favour of the petitioners in this case.

10. I, therefore, allow this petition and quash and set aside the proceeding of Criminal Case No.568 of 1996 on the file of Judicial Magistrate First Class, Ahmedabad Rural. Rule is made absolute.

10. The learned advocate for the respondent No.1 prays to stay the operation of this order for 2 weeks, but in the circumstances of the case, I do not find any reason to accept his request. Request is rejected.

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